IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision No. 50 of 2005

P.K. Jain
S/o late P.C. Jain
R/o 174, 256 Block -I,
Karanpur, Dehradun.
…… Plaintiff / Revisionist

Versus

Naveen Kumar Kamboj
S/o Sri Som Prakash
R/o 174, 256 Block –I,
Karanpur, Dehradun
……. Defendant / Respondent

Mr. Arvind Vashishth, Advocate for the revisionist.
None for the respondent.

Hon. Prafulla C. Pant, J.

By means of this revision, moved under Section 25 of the Provincial Small Cause Courts Act, 1887, the revisionist-landlord has challenged the judgment and decree dated 31st May, 2005, passed by learned Judge, Small Causes Court / District Judge, Dehradun in Small Causes Court Suit No. 12 of 2002, between the parties.

2) Heard learned counsel for the revisionist. None appeared for the respondent even after sufficient service.

3) Brief facts of the case are that the defendant-respondent is tenant of plaintiff-revisionist in a portion of a house situated in Karanpur, Dehradun. According to the plaintiff the rate of rent was Rs. 700/- per month, while the defendant in his written statement has disputed the rate and

alleged that the rate of rent was Rs. 350/- per month. It appears that the revisionist-landlord sent a notice dated 20.04.202 to the defendant-respondent alleging that he has committed default in payment of rent and the tenancy was terminated w.e.f. 29th May 2002 i.e. 30 days after the receipt of the notice. The said notice was replied by the defendant-respondent alleging that the rent was required to be paid only for the months April 2000 to May 2002 and with said reply the defendant sent a cheque bearing No. 348001 dated 16.05.2000 for Rs. 8,750/- towards arrears of the rent. The revisionist thereafter filed a suit for ejectment & arrears of rent and mesne profits before the Judge Small Causes Court. The defendant contested the case before the trial court. Learned Judge Small Causes Court, after hearing the parities and recording the evidence, came to the conclusion that the rate of rent was Rs. 350/- per month and not Rs. 700/- per month and it was further held by the trial court that since the defendant had already paid the entire rent due, as such, he was protected under sub-section (4) of Section 20 of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 and dismissed the suit for ejectment.

4) Before further discussions, it is pertinent to mention here that sub-section (4) of Section 20 of the U.P. Act No. 13 of 1972, reads as under:

> ***"(4) In any suit for eviction on the ground mentioned in clause (a) of sub-section (2), if at the first hearing of the suit the tenant unconditionally pays or [tenders to the landlord or deposits in court] the entire amount of rent and damages for use and occupation of the building due from him (such damages for use and occupation being calculated at the same rate as rent)***

together with interest thereon at the rate of nine per cent per annum and the landlord's costs of the suit in respect thereof, after deducting therefrom any amount already deposited by the tenant under sub-section (1) of Section 30, the court may, in lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on that ground:

Provided that nothing in this sub-section, shall apply in relation to a tenant who or any member of whose family has built or has otherwise acquired in a vacant state, or has got vacated after acquisition, any residential building in the same city, municipality, notified area or town area.

Explanation. *–For the purposes of this sub-section –*

(a) *the expression "first hearing" means the first date for any step or proceeding mentioned in the summons served on the defendant;*

(b) *the expression "cost of the suit" includes one-half of the amount of counsel's fee taxable for a contested suit*

5) In view of above provision, for the protection under it, the tenant is not only required to deposit the rent due but also the nine per cent interest and cost of landlord's suit. There is nothing in the impugned judgment and order which indicates that the defendant deposited the rent claimed with interest and costs. Not only this, the learned trial court has erred in law in holding that the tenant is not liable to pay water tax, as the same is not claimed by the landlord, which fact appears to be against the record, as in paragraph 5 of the plaint it has been specifically mentioned that the taxes are due apart from the rent at the rate of Rs. 7,00/- per month. A

reply to the notice given by the defendant, which was sent on 17th May, 2002 by the defendant, indicates that defendant after admitting due rent of 26 months has paid rent of only 25 months, that too at the rate of Rs. 350/- per month and, thereafter, Rs. 4,450/- on 9th April, 2003, which amount together is far short of the amount required to be deposited under sub-section (4) of Section 20 of the aforesaid Act. Apart from this, the learned trial court has erred in appreciating the evidence as to the rate of rent, on record whereby it has disbelieved the signature of the tenant in the counter foil of the receipt of rent regarding which the trial court has mentioned that the signatures of the defendant were obtained on blank counter foil (Which was not the case set up by the defendant).

6) In the circumstances, the impugned judgment and decree suffers from material illegality, which has resulted in failure of justice. As such, the revision deserves to be allowed. Accordingly, the revision is allowed. The impugned judgment and decree passed on 31.05.2005 is set aside. The case is remanded back to the trial court for fresh decision, according to the law, after giving opportunity to the parties of being heard. The trial court is directed to decide the S.C.C. Suit No. 12 of 2002 without unnecessary delay, preferably, within six months from today. No order as to costs. The lower court record be sent back, immediately.

(Prafulla C. Pant, J.)

17.02.2006